

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Alan Tucek,)	
)	Case No. _____
Plaintiff,)	
)	COMPLAINT
v.)	
)	Jury Trial Demanded
Cadillac Accounts Receivable Management,)	
Inc.,)	
)	
<u>Defendant.</u>)	

NATURE OF ACTION

1. Plaintiff Alan Tucek (“Plaintiff”) brings this action against Defendant Cadillac Accounts Receivable Management, Inc. (“Defendant”) pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

JURISDICTION, VENUE, AND STANDING

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff resides in this district, and where Defendant transacts business in this district.

4. “In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016). Congress is “well positioned to identify intangible harms that meet minimum Article III requirements,” thus “Congress may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were

previously inadequate in law.” *Id.* (quoting *Lujan v. Defs of Wildlife*, 504 U.S. 555, 578 (1992)).

5. “Without the protections of the FDCPA, Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.’” *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467, at *3 (N.D. Ill. July 11, 2016) (quoting 15 U.S.C. § 1692(b)). Thus, a failure to honor a consumer’s right under the FDCPA constitutes an injury in fact for Article III standing. *See id.* at *3 (holding that a consumer “has alleged a sufficiently concrete injury because he alleges that [Defendant] denied him the right to information due to him under the FDCPA”); *see also Church v. Accretive Health, Inc.*, No. 15-15708, 2016 WL 3611543, at *3 (11th Cir. July 6, 2016) (holding that consumer’s § 1692g claim was sufficiently concrete to satisfy injury-in-fact requirement).

6. “The Supreme Court has held time and again that the violation of a statutory right to receive information one is entitled to receive creates a concrete injury sufficient to confer standing on a plaintiff.” *Zia v. CitiMortgage, Inc.*, 210 F.Supp.3d 1334, 1343 (S.D. Fla. 2016).

7. “The FDCPA does create an informational right which did not exist prior to its enactment, and that right is tied to the harm which a consumer may suffer if not provided with that information. Consequently, the deprivation of that information is, in most cases, sufficient to confer Article III standing. That was the law before *Spokeo*, and that law was not based on an erroneous understanding of Article III like the one corrected by *Spokeo*, but by application of well-settled principles of standing jurisprudence which *Spokeo* did not change (and, in fact, upon which *Spokeo* relied).” *Hagy v. Demers & Adams, LLC*, No. 2:11-CV-530, 2017 WL 1134408, at *4 (S.D. Ohio Mar. 27, 2017).

8. “[E]ven though actual monetary harm is a sufficient condition to show concrete harm, it is *not* a necessary condition.” *Lane*, 2016 WL 3671467 at *4 (emphasis in original).

THE FAIR DEBT COLLECTION PRACTICES ACT

9. Congress enacted the FDCPA to “eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010) (citing 15 U.S.C. § 1692(e)).

10. In order to protect gullible consumers, the Sixth Circuit, “in determining whether a statement qualifies as misleading, employs an objective, ‘least-sophisticated-consumer’ test.” *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 592 (6th Cir. 2009); *Smith v. Computer Credit, Inc.*, 167 F.3d 1052, 1054 (6th Cir. 1999) (“The least sophisticated debtor standard is ‘lower than simply examining whether particular language would deceive or mislead a reasonable debtor.’”) (quoting *Swanson v. Southern Oregon Credit Service, Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1988)).

11. “Federal courts have broadly recognized the FDCPA as a strict-liability statute.” *Gamby v. Equifax Info. Servs. LLC*, 462 F. App’x 552, 556 (6th Cir. 2012) (citing *Turner v. J.V.D.B. & Assocs., Inc.*, 330 F.3d 991, 995 (7th Cir. 2003)).

12. “Structured as such, the FDCPA functions both to protect the individual debtor and advance the declared federal interest in ‘eliminat[ing] abusive debt collection practices.’” *Stratton v. Portfolio Recovery Associates, LLC*, 770 F. 3d 443, 449 (6th Cir. 2014), *as amended* (Dec. 11, 2014) (quoting 15 U.S.C. § 1692(e)).

PARTIES

13. Plaintiff is a natural person who at all relevant times resided in the State of Michigan, County of Crawford, and City of Frederic.

14. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

15. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

16. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

17. Plaintiff is a natural person allegedly obligated to pay a debt asserted to be owed or due a creditor other than Defendant.

18. Plaintiff’s alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, personal medical services (the “Debt”).

19. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts.

20. Defendant regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

21. In connection with the collection of the Debt, Defendant sent Plaintiff a letter dated May 16, 2017.

22. Defendant’s May 16, 2017 letter was its initial communication with Plaintiff with respect to the Debt.

23. A true and correct copy of the May 16, 2017 letter is attached to this complaint as Exhibit A.

24. After receiving the letter, Plaintiff sent Defendant a timely written dispute dated May 22, 2017, via certified mail.

25. A true and correct copy of Plaintiff's May 22, 2017 written dispute and envelope are attached to this complaint as Exhibit B.

26. Plaintiff's written dispute was properly addressed to the address provided on Defendant's May 16, 2017 letter. *Compare* Exhibit A, *with* Exhibit B at p. 3.

27. The United States Postal Service attempted to deliver the letter on two separate occasions, May 31, 2017 and June 9, 2017. Exhibit B at p. 3.

28. The United States Postal Service ultimately returned Plaintiff's letter as unclaimed. *See* Exhibit B at p. 3.

29. Despite Defendant's refusal to claim Plaintiff's written dispute, Plaintiff's dispute was timely under the FDCPA.

30. Nevertheless, in connection with the collection of the Debt, Defendant sent Plaintiff subsequent written communication dated August 8, 2017.

31. A true and correct copy of Defendant's August 8, 2017 letter is attached to this complaint as Exhibit C.

32. Defendant's August 8, 2017 letter did not provide Plaintiff with verification of the Debt.

33. To date, Defendant has never provided Plaintiff with verification of the Debt.

COUNT I
VIOLATION OF 15 U.S.C. § 1692f

34. Plaintiff repeats and re-alleges each factual allegation contained above.

35. The FDCPA prohibits the use of unfair or unconscionable means to collect debts.

See 15 U.S.C. § 1692f.

36. In addition to the non-exhaustive list of conduct that violates the FDCPA, § 1692f “allows a court to sanction improper conduct the FDCPA fails to address specifically.” *Turner v. Professional Recovery Services, Inc.*, 956 F. Supp. 2d 573, 580 (D.N.J. 2013) (quoting *Adams v. Law Offices of Stuckert & Yates*, 926 F. Supp. 521, 528 (E.D. Pa. 1996)).

37. Defendant violated 15 U.S.C. § 1692f by using unfair or unconscionable means against Plaintiff in connection with the collection of the Debt when it refused to claim Plaintiff’s timely written dispute.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692f;
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff reasonable attorneys’ fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692g(b)

38. Plaintiff repeats and re-alleges each factual allegation contained above.

39. A key provision of the FDCPA is § 1692g, which requires a debt collector to send, within five days of its initial communication with a consumer, a written notice which provides information regarding the debt and informs the consumer of his or her right to dispute the validity of the debt, and/or request the name and address of the original creditor, within 30 days of receipt of the notice. *See* 15 U.S.C. § 1692g(a).

40. Congress adopted “the debt validation provisions of section 1692g” to guarantee that consumers would receive “adequate notice” of their rights under the FDCPA. *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (citing *Miller v. Payco–General Am. Credits, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991)).

41. This validation requirement is a “significant feature” of the law that aimed to “eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.” *See Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068, 1070 (9th Cir. 2016) (citing S. Rep. No. 95-382, at 4 (1977)).

42. “The verification provision must be interpreted to provide the consumer with notice of how and when the debt was originally incurred or other sufficient notice from which the consumer could sufficiently dispute the payment obligation. This information does not have to be extensive. It should provide the date and nature of the transaction that led to the debt” *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 758 F.3d 777, 785-86 (6th Cir. 2014).

43. If a consumer requests validation, “the debt collector shall cease collection of the debt . . . until the debt collector obtains verification” and mails such verification to the consumer. 15 U.S.C. § 1692g(b).

44. Defendant violated 15 U.S.C. § 1692g(b) by continuing to contact Plaintiff without first providing verification of the Debt, after effectively receiving Plaintiff’s timely written communication disputing the Debt.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692g(b);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff reasonable attorneys’ fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem proper.

TRIAL BY JURY

45. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: December 29, 2017

Respectfully submitted,

s/Joseph Panvini
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